

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MERWYN ELOISE STUBBENDECK,)
Individually and as Special)
Asministratrix of the estate of Edgar)
Stubbendeck, deceased,)

4:09CV3154

Plaintiff,)

v.)

MEMORANDUM AND ORDER

DAVID CLAYTON OLIVER, and)
LINCOLN GENERAL INSURANCE,)
Company, a Pennsylvania Corporation,)

Defendants.)

This case was filed on July 17, 2009, and the defendants were served shortly thereafter. As of early October 2009, no answer had been filed, and the plaintiffs had not moved for default. The court contacted plaintiffs' counsel and was told the case was settled. Counsel for the defendants, Stephanie F. Stacy, confirmed the parties had entered into a settlement agreement in this wrongful death case subject to county court approval.

When dismissal documents were not on file by November 9, 2009, the court again inquired as to the status of this case. The parties' counsel stated the case was settled, subject to the approval of the wrongful death settlement by the County Court of Otoe County, Nebraska, but no hearing had been held.

Upon further inquiry, this court was advised on January 6, 2010 that a hearing had neither been held nor set to determine if the parties' settlement agreement will be approved by the Otoe County Court. The plaintiffs' complaint has been pending but idle in this forum for nearly six months, and the case needs to be either dismissed or progressed to trial.

Accordingly,

- 1) It is respectfully requested that the County Court of Otoe County, Nebraska promptly conduct a hearing to determine if the parties' settlement agreement should be approved.
- 2) Once a hearing is set, plaintiffs' counsel shall file in this forum a copy of any order setting the hearing, or a statement advising this court of the scheduled county court hearing date and time.
- 3) Plaintiffs' counsel shall promptly file a copy of any order entered by the County Court of Otoe County, Nebraska regarding approval of the parties' settlement agreement. If the settlement is approved by the county court, within thirty days thereafter, the plaintiffs shall file a notice of dismissal with prejudice with the clerk of this court, and shall email a proposed order for dismissal with prejudice to urbom@ned.uscourts.gov.
- 4) Although the defendants have not filed an answer or entered an appearance, as to all documents filed or submitted to this court in accordance with this order, plaintiffs' counsel shall file a certificate of service stating the documents have been served on Stephanie F. Stacy, as counsel for the defendants.
- 3) The Clerk shall mail a copy of this memorandum and order to the following:

Kari R. Kuehn, Clerk Magistrate
County Court of Otoe County, Nebraska
1021 Central Avenue
P.O. Box 487
Nebraska City, NE 68410

and

Stephanie F. Stacy
BAYLOR, EVNEN LAW FIRM
Wells Fargo Center
1248 O Street, Suite 600
Lincoln, NE 68508

January 8, 2010.

BY THE COURT:

Richard G. Kopf

United States District Judge